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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,679	03/31/2004	Roy L. Hood	713629.167	8311

27128 7590 12/21/2005

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EXAMINER

PIERCE, JEREMY R

ART UNIT PAPER NUMBER

1771

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/814,679

Applicant(s)

HOOD ET AL.

Examiner

Jeremy R. Pierce

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-46 is/are pending in the application.
- 4a) Of the above claim(s) 16-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-15 and 34-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 21, 2005 has been entered.

### ***Response to Amendment***

2. Applicant's amendment filed on October 21, 2005 has been entered. Claims 1 and 34 have been amended. Claims 1-5 and 7-46 are currently pending with claims 16-33 withdrawn from consideration.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3, 5, 7, 8, 10-12, 15, 34-40, and 42-44 are rejected under 35

U.S.C. 102(e) as being anticipated by Sallee (U.S. Patent No. 5,976,643).

Sallee discloses a base sheet material with a plurality of garnishes projecting therefrom (Figure 1). The base material is constructed of a rigid plastic backing (column 4, lines 1-7) and the garnishes are also formed from plastic material (column 3, lines 58-67). The garnishes meet the claimed limitations for the projecting element portions because the polymer that forms the terminal part of the garnish is also present in the core of the base section, which is made from a different polymer (see Figures 5-7). The base section meets the limitations of the surface of the lower part of the projecting element. With regard to claims 3 and 11, the base sheet must contain at least one pigment that is different from one of the projecting elements since the base sheet is formed of multiple colors (column 4, line 1). With regard to claim 5, the retaining ring is preferably Derlin (column 6, line 21), which is a thermoplastic acetal. With regard to claim 7, various colors are used to create a camouflaged appearance (column 5, lines 20-21). With regard to claim 8, the garnish is made from polyethylene (column 3, line 60). With regard to claim 10, the base sheet has holes (Figure 1). With regard to claim 12, the base material is also camouflaged (column 4, line 1). With regard to claim 15, a plurality of projecting elements is present (Figure 1).

With regard to claims 34 and 35, the garnishes would comprise at least a first plurality of projecting elements and a second plurality of projecting elements because each set may be colored differently to effect a camouflaged pattern (column 5, lines 11-

21). With regard to claims 36, 37, 43, and 44, the base sheet must contain at least one pigment that is different from one of the projecting elements since the base sheet is formed of multiple colors (column 4, line 1). With regard to claims 38 and 40, Sallee discloses the garnishes are made from polyethylene (column 3, line 60).

5. Claims 1, 9, 10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Zuiddam et al. (U.S. Patent No. 4,866,808).

Zuiddam et al. disclose floor mat comprising a plurality of U-shaped plastic profiles (Abstract). The terminal parts that differ from the base section in Zuiddam et al. would be the bristles that come out of the center of the U-shaped projections (Figure 1). The bristles would comprise the claimed first polymer and the U-shaped projections would comprise the claimed second polymer. With regard to claim 9, a slip-resistant sheet is provided (column 4, lines 20-24). With regard to claim 10, there are open surfaces (Figure 2). With regard to claim 15, a plurality of projecting elements is present (Figure 1).

6. Claims 1, 2, 5, 7, 10, 12, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsui et al. (U.S. Patent No. 4,525,404).

Matsui et al. teach an artificial fur-like pile article comprising thermoplastic sheath/core fibers (Abstract). Matsui et al. disclose making a fabric by pile weaving, pile knitting, or silver knitting (column 6, lines 9-19), thus creating a generally planar base portion. The piles created from the knitting create projecting element portions emanating from the fabric. These piles meet the claim limitations of having a core and terminal part formed from one polymer and a surface formed of a different polymer

(Figure 4). With regard to claim 2, Matsui et al. disclose differentially dyeing the fabric so that the terminal part has light pigment and the lower portion of the projection has a dark pigment (column 12, lines 12-42). With regard to claim 5, Matsui et al. disclose using polyamide, polyester, or polyvinyl (column 6, lines 20-28). With regard to claim 7, dye is used in the product (column 6, line 45). With regard to claim 10, knitted fabrics possess open spaces. The recitation that the open spaces are to facilitate cleaning is merely an intended use of the product. With regard to claim 12, the fabric base is also dyed in the dyeing process (column 12, lines 12-42). With regard to claim 15, a plurality of projecting elements would be present since the material is used as an artificial fur.

7. Claims 1, 5, 7, 10, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Fukuda et al. (U.S. Patent No. 5,466,505).

Fukuda et al. disclose a napped fabric wherein the naps comprise tapered sheath/core fibers (Abstract). The fabric would comprise Applicant's claimed base section and the naps meet the limitations of the claimed projection elements (See Figures 2a-2e). With regard to claim 5, the polyester fibers (column 5, lines 11-15) used in Fukuda et al. are thermoplastic. With regard to claim 7, the fabric and napped fibers are dyed (column 6, lines 37-46). With regard to claim 10, knit and woven fabrics disclosed by Fukuda et al. (column 7, lines 24-30) have open spaces. With regard to claim 14, Fukuda et al. disclose using metal oxides as a delusterant (column 5, lines 31-45).

8. Claims 34, 39, 41, 44, and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Valyi et al. (U.S. Patent No. 6,132,669).

Valyi et al. teach a molded product created by combining a film layer with molten plastic (Abstract). The molten plastic is applied to the film in a pattern and takes the shape of the mold cavity (column 2, lines 20-37). The film of Valyi et al. anticipates the claimed base portion and the pattern of molded plastic anticipates the claimed projecting element portions. Valyi et al. teach that two different polymers can be molded in different patterns to provide designed properties to the finished product (column 4, lines 40-61). With regard to claim 39, fillers may be used (column 8, lines 10-13). With regard to claim 41, additional film layers may be provided (column 9, lines 5-12) and these would provide some degree of slip-resistance. With regard to claim 44, the film base has a distinct color (column 5, lines 36-43). With regard to claim 46, a conductive polymer may be used (column 8, lines 14-17).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee.

With regard to claims 2 and 4, Sallee does not disclose what color the retaining collar, which comprises the claimed wall of the projecting element, might be. Sallee does disclose that the material is multi-colored though (column 5, lines 11-21). It would

have been obvious to a person having ordinary skill in the art to use two distinct pigments for the retaining collar and the tufts, since the tufts form a camouflaged pattern and making retaining rings with the exact same color for each tuft would create an unnecessary and great expense because the retaining rings are not disclosed as contributing to the camouflaged pattern.

11. Claims 9 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee in view of Nesbitt (U.S. Patent No. 5,549,938).

Sallee does not disclose the use of a slip resistant sheet. Nesbitt teaches that a camouflage material can be backed by a magnetic sheet, which allows the material to be securely fastened to a vehicle without slipping (Abstract). It would have been obvious to a person having ordinary skill in the art at the time of the invention to provide a slip resistant sheet to Sallee in order to allow the camouflage material to be fastened to a vehicle, as taught by Nesbitt.

12. Claims 13 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee in view of Rawlinson (U.S. Patent No. 4,329,196).

Sallee does not disclose what density the polyethylene material should be. Rawlinson teaches that grass-like material made from polyethylene should have a density between 0.90 and 0.93 (column 3, lines 8-10). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use a polyethylene with a density between 0.915 and 0.92 in the garnish of Sallee, since such range is embraced by the art as being known and it has been held that discovering



the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

13. Claims 14 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee in view of Sesselmann (U.S. Patent No. 5,790,987).

Sallee teaches the material may be used on a person (Abstract), but does not disclose the use of filler. Sesselmann teaches that alumina may be added to camouflage material to help reduce odor (column 2, lines 5-27). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include alumina in the material of Sallee in order to reduce odor, as taught by Sesselmann.

14. Claims 35-37 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Valyi et al.

Valyi et al. discuss the coloring of the film base material (column 5, lines 38-43), but do not teach how the coloring of the film base should differ from the color of the projecting elements. However, Valyi et al. do disclose that when two polymers of different characteristics are used, the ultimate effect is to provide design properties (column 4, lines 54-61). Design patterns are easily created using different colors. It would have been obvious to a person having ordinary skill in the art at the time of the invention to use different pigments or dyes in the first and second polymers used to create the projecting elements in Valyi et al. in order to easily provide the desired design properties to the final product, as desired by Valyi et al. Such a modification only involves a mere change in color. Similar reasoning also makes it obvious to use a different color in the base film.

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15. Claims 38, 40, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Valyi et al. in view of Allan et al. (U.S. Patent No. 5,851,474).

With regard to claims 38 and 40, Valyi et al. teach that any thermoplastic material may be used for the molten material (column 5, lines 32-36), but fail to provide any specifics. Allan et al. teaches a molding process also using molten thermoplastic material (Abstract). Allan et al. disclose various polymers that may be used, including polyethylene, nylon, and polystyrene (column 4, lines 20-67). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use polyethylene, nylon, polystyrene, or any one of the other listed polymers in Allan et al. in the product of Valyi et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. With regard to claim 45, Allan et al. teach that low density and high density polyethylene are useful as molten thermoplastic materials in molding (column 4, lines 33-35). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use polyethylene with a density in the range of 0.915 to 0.92 since such a low density polyethylene is known to be useful in molding polymers as taught by Allan et al., and selection of a known material on the basis of its suitability for the intended use is obvious as set forth above.

### ***Response to Arguments***

16. Applicant's arguments filed October 21, 2005 have been fully considered but they are not persuasive.

17. Applicant argues that Sallee does not disclose a unitary continuous thermoplastic article as claimed in the present application, but instead discloses an article assembled from individual non-continuous polymer materials. However, while Sallee may teach a product which is formed of non-continuous pieces, once the pieces are put together, the resulting product is continuous. While the garnishes are separate and discrete before assembly to the base, a unitary continuous article is formed once the garnishes are attached to the base. Thus, the claim limitations are met with the final product of Sallee.

18. Applicant argues that Zuiddam does not disclose a unitary continuous thermoplastic article, but instead discloses an article assembled from non-continuous materials, some of which may be made of polymers. However, despite the fact that parts of the Zuiddam product are non-continuous before assembly, once the parts are assembled, the resulting final product is in a continuous form. Thus, the final product of Zuiddam meets the claim limitations.

19. Applicant argues that the 103 rejections are improper because Sallee and the combination of Sallee with Nesbitt, the combination of Sallee with Rawlinson, and the combination of Sallee with Sesselmann all fail to suggest providing a unitary continuous thermoplastic article. However, Sallee by itself teaches an article that is unitary and continuous as set forth above. Once the non-continuous pieces taught by Sallee are combined together to form the final product, a continuous unitary article results.

Applicant does not attack the combinations of references on any particular grounds.


### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on normal business hours, but works flextime hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeremy R. Pierce  
Examiner  
Art Unit 1771

December 16, 2005